(30)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Sunil Kumar Sinha, J.

Writ Petition (S) No. 6719/2007

Petitioner : Shiv Shankar Singh, S/o Late Sarup Singh, aged about 44 years; Assistant Soil Conservation Officer, R/o Ganga Nagar, Sector - 2 Mangla Bilaspur (CG)

Versus

Respondents

1. State of Chhattisgarh Through the Secretary, Agriculture Department, DKS Bhawan, Raipur (CG)

2. The Under Secretary, Agriculture Department, DKS Bhawan, Raipur (CG)

3. Shri RP Singh, Assistant Soil Conservation Officer, Ambikapur, District - Sarguja (CG)

Writ Petition under Article 226 of the Constitution of India

Present : Shri PR Patankar, counsel for the petitioner.
Ms Sunita Jain, Panel lawyer for the State on advance copy.

ORAL ORDER
(Passed on 17th November, 2007)

Heard on admission.

The petitioner, who is working on the post of Assistant Soil Conservation Officer at Bilaspur has been transferred from Bilaspur to Ambikapur on administrative grounds.

Learned counsel for the petitioner argues that three children of the petitioner are studying in the local institutions (two

in School and one in College); therefore, if the petitioner is sent from Bilaspur to Ambikapur, it may adversely affect their studies.

Learned counsel for the petitioner relies upon the decision of Apex Court rendered in the matter of **Director of School Education, Madras and Others Vs O.Karuppa Thevan and another** reported in **1994 Supp (2) SCC 666**. In the said matter, where the transfer was effected during mid-session, the Supreme Court said that, although there is no such rule, but in effecting transfer, the fact that the children of an employee are studying should be given due weight, if the exigencies of the service are not urgent. The Supreme Court observed that learned counsel appearing for the appellant (employer in that case) was unable to point out that there was such urgency in that case that the employee could not have been accommodated till the end of the current academic year. It is in these facts and circumstances of that particular case while setting aside the order of Tribunal, the Supreme Court directed that the appellant should not effect the transfer till the end of current academic year.

In the opinion of this Court, the aforesaid judgement is not helpful to the petitioner, because it is distinguishable on facts; firstly, on the ground that in this State, academic session begins from July/August and ends in the month of March/April; and the order of transfer is passed on 27th October, 2007 and also that the order has been passed showing administrative exigencies. There is nothing on record to show that the exigencies of the services are not urgent and on that ground, either the transfer of the petitioner could be set aside or kept in abeyance to complete the academic-session.

The transfer is an incidence of service. Nobody working on a transferable post can claim for his posting at a particular place. Who should be posted where is to be seen by the employer which

depends upon the administrative exigency as also public interest. Unless the order of transfer is shown to be vitiated by malafides, extraneous considerations or is shown to be passed against any statutory rule or the Act, the same cannot be interfered with by a Court of law, is the settled view of the Apex Court.

Learned counsel for the petitioner could not point out any such ground of malafide or of extraneous consideration or that the order has been passed against any statutory rule or the Act.

I do not find any reason to interfere with the order of transfer of the petitioner on this ground. The petition has no merit and the same is dismissed at the motion stage itself.

Consequently, I.A.Nos. 1 & 2 also stand disposed of.

Sd/-
Sunil Kumar Sinha
Judge

padma